



GARVEY SCHUBERT BARER

WASHINGTON, DC OFFICE

*fifth floor*

*flour mill building*

*1000 potomac street nw*

*washington, dc 20007-3501*

TEL 202 965 7880 FAX 202 965 1729

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Please reply to HENRY A. SOLOMON  
hsolomon@gsblaw.com TEL (202) 298-2529

January 18, 2005

Our Client No. 21159-00100-60

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-B204-C  
Washington, DC 20554

RECEIVED

JAN 19 2005

Federal Communications Commission  
Office of Secretary

**Reference: EB Docket No. 02-21**  
**Peninsula Communications, Inc.**

Dear Madam Secretary:

Submitted herewith are an original and fourteen (14) copies of the "Comments of Kodiak Island Broadcasting Company, Inc., on Enforcement Bureau's Further Comments."

Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted

**KODIAK ISLAND BROADCASTING  
COMPANY, INC.**

By: 

Henry A. Solomon  
Its Attorney

HAS:ar  
Enclosures

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	EB Docket No. 02-21
	)	
<b>Peninsula Communications, Inc.</b>	)	File No. EB 01-IH-0609
Licensee of stations	)	FRN: 0001-5712-15
KGTL, Homer, Alaska;	)	Facility ID Nos. 52152
KXBA (FM), Nikiski Alaska	)	86717
KWVV-FM, Homer, Alaska; and	)	52154
KPEN-FM, Soldonta, Alaska	)	52149
	)	
Licensee of FM translator stations	)	
K292ED, Kachemak City, Alaska;	)	52150
K285DU, Homer, Alaska;	)	52157
K285EG and K272DG, Seward, Alaska	)	52158 and 52160
	)	
Former licensee of FM translator stations	)	
K285EF, Kenai, Alaska;	)	
K283AB, Kenai/Soldonta, Alaska;	)	
K257DB, Anchor Point, Alaska;	)	
K265CK, Kachemak City, Alaska;	)	
K272CN, Homer, Alaska; and	)	
K274AB and K285AA, Kodiak Alaska	)	

To: The Commission

**COMMENTS OF KODIAK ISLAND BROADCASTING COMPANY, INC.,  
ON ENFORCEMENT BUREAU'S FURTHER COMMENTS**

Kodiak Island Broadcasting Company, Inc. ("KIBC"), by its attorneys, respectfully files its Comments on the "Enforcement Bureau's Further Comments on Request to Reopen the Record and for Official Notice." In support hereof the following is shown:

**I. IDENTITY AND INTEREST**

KIBC is the licensee of FM Station KRXX and AM Station KVOK, Kodiak, AK. It participated as a party in the proceedings below involving Peninsula Communications, Inc. ("PCI"). KIBC alerted the Commission to the fact that PCI had reactivated its unlicensed

Kodiak translators in violation of Section 301 of the Act, 47 U.S.C. §301, and lawful orders to halt operations.<sup>1</sup> KIBC is thus familiar with the record and is filing these Comments in order to assist the Commission in interpreting new Section 312(g) of the Act, 47 U.S.C. § 312(g), which lacks any legislative history.

## II. COMMENTS

PCI's seven translator licenses clearly did not expire because the stations remained off the air for any consecutive 12-month period. During the course of these proceedings PCI invoked former § 312(g) in an attempt to excuse its outrageous conduct; *i.e.*, its willful and repeated refusals to discontinue illegal translator service at Kodiak, Kenai, Kenai/Soldanta, Kachemak City, and Homer, Alaska. Therefore, KIBC agrees with the Bureau's statement at paragraph 4 of its Comments that the first portion of new § 312 (g) ("except that the Commission may....."), does not apply to PCI.<sup>2</sup>

KIBC respectfully disagrees with the Bureau's view expressed later in the same paragraph, that

[T]o the extent that the final sentence of amended section 312(g) is viewed as existing outside the context of stations otherwise covered by section 312(g), then we believe that the sentence provides for the reinstatement of the licenses for the seven PCI translators ordered off the air by the Termination Order.

Read in the context of this record, the plain language of the statute does not support the Bureau's analysis.

---

<sup>1</sup> KIBC was an intervenor in *Peninsula Communications, Inc. v. FCC*, No. 01-2373. On January 30, 2003, the Court affirmed, *per curiam*, the FCC's order rescinding conditional grants of PCI's seven FM translator stations.

<sup>2</sup> KIBC believes that the Bureau is entirely correct when it notes that PCI's full-service licenses were revoked in the Initial Decision due to that party's demonstrable lack of fitness, and not because it violated translator rules. Bur. Comments p. 3.

The final sentence of amended § 312(g), states that

*Any broadcast license revoked or terminated in Alaska in a proceeding related to broadcasting via translator, microwave or other alternative signal delivery is reinstated. [Italics added.]*

As the Bureau recognizes in footnote 2 of its Comments the “*Termination Order*”<sup>3</sup> “terminated PCI’s authority to operate the translators.” It neither *revoked*<sup>4</sup> nor *terminated any “broadcast license”* held by PCI, but simply ordered PCI to halt *unlicensed* translator operations. Indeed, at page 11 of its July 29, 2002 “Opposition to Motion for Stay,” in *Peninsula Communications, Inc. v. FCC*, the Commission’s General Counsel declared that the *Termination Order* required “PCI to cease operations by midnight of the day after” it was released.<sup>5</sup>

It is absolutely clear that PCI’s translator licenses, which were conditionally renewed in 1997, *expired* in 2000. They became null and void by operation of law when the divestiture condition imposed by the FCC was not satisfied within the timeframe set in *Peninsula Communications, Inc.*, 15 FCC Rcd 3293, 3296 (2000) (PCI must assign licenses to legitimate buyer within 30 days of February 14, 2000). Those assignments were never consummated, and by mid-March, 2000 PCI had lost its licenses.

The *Termination Order* not only commanded PCI to stop operating unlicensed translators and dismissed its grossly untimely “Rejection of Conditional License Renewal and Assignment of License Grants, but it completed long-overdue administrative tasks. The FCC formally rescinded the conditional license renewal grants (which had become final when PCI declined to

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<sup>3</sup> *Peninsula Communications, Inc.*, 16 FCC Rcd 11364 (2000).

<sup>4</sup> See *Peninsula Communications, Inc. v. FCC*, *Mem. at 2* (“...the Commission did not revoke any of the licenses”).

<sup>5</sup> “Despite repeated warnings, PCI did not halt operation of the seven translators.” *Opp. to Mot. for Stay*, p. 11.

reject them within 30 days), <sup>6</sup>and took other allied actions to clear the official record of any references to the seven translators' call signs, and the moot assignment and renewal applications. Thus, to the extent the *Termination Order* involved a "termination" action, the Commission could not have been clearer: In paragraph 21 it directs PCI to "TERMINATE OPERATIONS" of its unlicensed stations, which had been transmitting at the FCC's sufferance while PCI litigated. <sup>7</sup>

In sum, it is evident that the final sentence of newly amended § 312(g) is inapplicable to this case because the 2001 *Termination Order* neither revoked nor terminated PCI's "licenses." The fog of litigation cannot obscure the fundamental fact that PCI had irrevocably lost its seven FM translator licenses early in 2000, and the federal district court in Anchorage and the Ninth Circuit<sup>8</sup> agreed when they approved the injunctive relief sought by the U.S. Attorney's Office in that city.

Respectfully submitted,

**KODIAK ISLAND BROADCASTING COMPANY,  
INC.**

By: 

Henry A. Solomon  
Its Attorney

Garvey Schubert Barer  
1000 Potomac Street, NW Fifth Floor  
Washington, DC 20007-3501  
Telephone: 202.298.2529  
Telecopier: 202.965.1729  
January 18, 2005

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<sup>6</sup> *Id.* at pp. 10-11.

<sup>7</sup> PCI did not suffer any injury in consequence of that directive. It merely ignored the FCC's order to halt operations and continued to transmit in violation of § 301, until it was enjoined from continuing to broadcast without a license. *United States v. Peninsula Communications, Inc.*, 287 F.3d 832 (9<sup>th</sup> Cir. 2002).

<sup>8</sup> *Id.*

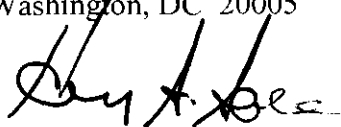
**CERTIFICATE OF SERVICE**

Henry A. Solomon certifies that he has on this eighteenth day of January, caused to be sent by email and by first class United States mail, a copy of the foregoing "Comments of Kodiak Island Broadcasting Company, Inc., on Enforcement Bureau's Further Comments." to:

James W. Shook, Esq.  
Special Counsel  
Enforcement Bureau, Investigations and Hearings Division  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 4-C330  
Washington, DC 20554

Jeffrey D. Southmayd, Esq.\*  
Southmayd & Miller  
1220 19<sup>th</sup> Street, N.W., Suite 400  
Washington, DC 20036

Peter Guttman, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
1401 I Street, N.W., Seventh Floor  
Washington, DC 20005

A handwritten signature in black ink, appearing to read "Henry A. Solomon", is written over a horizontal line.

Henry A. Solomon

\*VIA FACSIMILE

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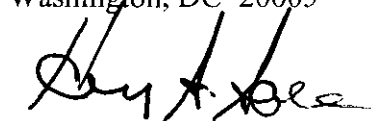
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Special Counsel  
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445 12<sup>th</sup> Street, S.W., Room 4-C330  
Washington, DC 20554

Jeffrey D. Southmayd, Esq.\*  
Southmayd & Miller  
1220 19<sup>th</sup> Street, N.W., Suite 400  
Washington, DC 20036

Peter Guttman, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
1401 I Street, N.W., Seventh Floor  
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Henry A. Solomon

\*VIA FACSIMILE